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**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 98-0483 IT**
**Individual Income Tax**
**For The Period: 1994 and 1995**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

## ISSUES

### I. Individual Income Tax: Imposition

**Authority:** IC 6-3-1-9; IC 6-3-1-12; IC 6-3-2-1; IC 6-3-4-1; IC –6-3-1-3.5
Cooper Industries, Inc. v. Indiana Dept. of State Revenue, 673 N.E.2d 1209 (Ind. Tax 1996); Richey v. Indiana Dept. of State Revenue, 634 N.E.2d 1375 (Ind. Tax 1994); Thomas v. Indiana Dept. of State Revenue, Case No. 49T10-9512-TA-00132 (Ind. Tax 1997).

Taxpayer protests the imposition of Indiana Individual Income Tax on his income.

## STATEMENT OF FACTS

The taxpayer protested the imposition of Individual Income Tax on his income. The taxpayer sent the Department a brief which stated, *inter alia*, that "Congress never intended to tax property," that "wages are property," and that the 16th Amendment to the United States Constitution does not provide "for the direct taxation of wages." Upon the request of the taxpayer, the Department granted the taxpayer ninety (90) days to proffer another brief to the Department, and notified the taxpayer that no further extensions or delays would be granted. The Department did not receive the new brief. The Department then scheduled a hearing for January 20, 1999, for the taxpayer. The notification of the hearing was sent by certified mail to the taxpayer on December 30, 1998.

The day of the hearing, January 20, 1999, the Department received a letter from the taxpayer stating that the taxpayer would not attend the hearing. The taxpayer stated in the letter, "I will contact you in writing within 30 days to schedule a meeting that will be more convenient for me." The taxpayer does not give any good cause for why he did not either telephone (telephone hearing) or arrive for the hearing. Nor did the taxpayer at any point prior to the hearing simply

telephone and inform the Department of any potential problems he had with the hearing date. Under the Indiana Code and the Indiana Administrative Code (*See*, IC 6-8.1-5-1), the Department has the right to determine whether a continuance or rescheduled hearing date will be granted. The Department of Revenue, per the Indiana Administrative Code, "shall set a date for a hearing of the protest" and "extensions of time, continuances and adjournments may be granted at the discretion of the department upon a showing of good cause." 45 IAC 15-5-3. The IAC goes on to state "[I]f a taxpayer or its representative fails to appear at a hearing without securing a continuance, the department will decide the issues on the best evidence available to the department."

Given that the taxpayer did not secure a continuance with the Department, this Letter of Finding is written based upon the file and the correspondence therein.

## I. Individual Income Tax: Imposition

### DISCUSSION

The taxpayer's argument is fairly easy to construct from his original brief—which was over fifty pages long. The taxpayer attempts to stitch together holdings, dicta, and phrases from disparate jurisdictions in order to make the claim that he is not in a "taxpayer" status and that wages are not taxable. The taxpayer, in his correspondence, states:

> [I]n order for you to assert an alleged liability, because the Indiana Income Tax is imposed "piggy back" on the federal liability, you should be hereby advised that there has been no admission of federal liability. . . absent the showing of federal tax liability by the Indiana Department of Revenue, there can be no state tax liability.

The taxpayer is referring to the fact that the Indiana Code borrows some of its definitions from the Internal Revenue Code. For instance, "gross income" is defined in the Indiana Code (IC 6-3-1-8) as having the meaning "as defined by section 61(a) of the Internal Revenue Code." The taxpayer erroneously believes that the Department cannot assess income tax if the taxpayer fails to report income tax to the federal government. The Indiana Tax Court, in Cooper Industries, Inc. v. Indiana Department of State Revenue, 673 N.E.2d 1209 (Ind. Tax 1996), dealt with the issue of federal taxable income used to calculate the state adjusted gross income. In that case, the Tax Court held that the issue is not what number appears on the taxpayer's return, but whether a particular item of income was included in taxable income under the Internal Revenue Code. Thus, the fact that the taxpayer fails to report his wages for federal income tax purposes does not mean that the state cannot tax the taxpayer's wages—since wages are in fact taxable for federal income tax purposes. The Department merely borrows the Internal Revenue Code's definition of "adjusted gross income," and IC 6-3-1-3.5 still outlines the test one must go through to see if they owe Indiana income tax—independent of the federal income tax question.

It is important to note that many of the cases brought forth in support of the taxpayer's arguments were based on tax laws that existed before the 16th Amendment to the Constitution, which was ratified in 1913. The amendment gave Congress the power "to lay and collect taxes on incomes, from whatever sources derived, without apportionment among the several States and without regard to any census or remuneration." Article X, Sec. 8, of the Indiana Constitution empowers the General Assembly to levy and collect a tax on income. Thus the federal government and the state government both clearly have the power to tax income, and the apportionment issue was long ago settled by the 16th Amendment.

The disingenuous nature of the taxpayer's argument is illustrated by the taxpayer's selective quoting. For instance, the taxpayer quotes U.S. v. Ballard, 535 F.2d 400 (8th Cir. 1976) to the effect that "the general term 'income' is not defined in the I.R.S. code." However, the court in the next sentence states that gross income is defined in 26 U.S.C. Sec. 16 (in pertinent part):

> All income from whatever source derived, including (but not limited to) the following items:
>
> (1) Compensation for services, including fees, commissions, fringe benefits, and similar items.

As for the argument that wages are not income, the taxpayer seizes upon the definition in Eisner v. Macomber, 252 U.S. 189 (1920), where the Supreme Court defined "income" as "the gain derived from capital, from labor, or from both combined." The taxpayer argues that labor is property, and that there is no gain from the exchange of labor and personal time for its equivalent in money. This ignores the fact that in Metcalf & Eddy v. Mitchell, 269 U.S. 514 (1926), the Supreme Court held that the wages or salaries received in exchange for services rendered are subject to the federal income tax.

The Indiana Tax Court has dealt with arguments similar to those of the taxpayer. In Thomas v. Indiana Dept. of State Revenue, Case No. 49T10-9512-TA-00132 (Ind. Tax 1997), the Tax Court dealt with the argument that "the federal definition of income does not include wages, salaries, or other forms of compensation." The Tax Court noted that Thomas relied upon Eisner v. Macomber to reach the "mistaken" conclusion that wages do not constitute income to their recipients. The Tax Court enunciated two reasons the taxpayer was mistaken: (1) the monetary payments made in exchange for labor were "severed from labor and received or drawn by the recipient for his separate use," and (2) even if, *arguendo*, the federal government overstepped its constitutional authority, it would not have affected Indiana's sovereign authority to levy the Indiana income tax.

Another Indiana Tax Court case is worth noting—Richey v. Department of State Revenue, 634 N.E.2d 1375 (Ind. Tax 1994). In that case, the Tax Court rejected Richey's argument that the Adjusted Gross Income tax in Indiana did not apply to income earned in a trade. As the Richey case states at the outset:

Does the State of Indiana, under the current constitutional and statutory framework of income taxation, possess the authority to tax the Indiana adjusted gross income of an individual Indiana resident? Although the question may suggest its own answer to most, it has nonetheless led the Petitioner, Jerry Richey, on a quest for the tax protester's grail—a court ruling that income taxation in this state and this country is void *ab initio*. Alas, no Merlin's magic or Excalibur can aid Richey's quest: Indiana has the authority to tax Richey's adjusted gross income.

## FINDING

The taxpayer's protest is denied.